

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NHU VAN PHAN, TANG (JANNY) NGUYEN,

Defendants.

4:12CR3059

MEMORANDUM AND ORDER

Defendant Nhu Van Phan has moved to continue the trial currently set for August 28, 2012. (Filing No. 104). As explained in the motion, defense counsel is not available during the current trial setting, and the parties are still engaged in plea negotiations. The motion to continue is unopposed. Based on the showing set forth in the motion, the court finds the motion should be granted. Accordingly,

IT IS ORDERED:

- 1) Defendant Nhu Van Phan's motion to continue, (filing no. 104), is granted.
- 2) **As to both defendants**, the trial of this case is set to commence before the Honorable John M. Gerrard, in Courtroom 1, United States Courthouse, Lincoln, Nebraska at 9:00 a.m. on October 16, 2012, or as soon thereafter as the case may be called, for a duration of six (6) trial days. Jury selection will be held at commencement of trial.
- 3) Based upon the showing set forth in the defendant Nhu Van Phan's motion and the representations of counsel, the Court further finds that the ends of justice will be served by continuing the trial; and that the purposes served by continuing the trial date in this case outweigh the interest of the defendant and the public in a speedy trial. Accordingly, **as to both defendants**, the additional time arising as a result of the granting of the motion, the time between today's date and October 16, 2012, shall be deemed excludable time in any computation of time under the requirements of the Speedy Trial Act, because despite counsel's due diligence, additional time is needed to adequately prepare this case for trial and failing to grant additional time might result in a miscarriage of justice. 18 U.S.C. § 3161(h)(1), (h)(6) & (h)(7).

August 17, 2012.

BY THE COURT:

s/ Cheryl R. Zwart
United States Magistrate Judge